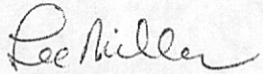


## MEMORANDUM

TO: Advisory Council to the PACT Board of Directors

FROM: Lee Miller   
Legal Advisor to the Office of State Treasurer

SUBJECT: Request to Waive PACT Rule 5.08

PACT CONTRACT: Lange Clark, Purchaser  
Virginia Clayton Clark, Beneficiary  
PACT Contract No. [REDACTED] 6536

DATE: April 18, 2014

Mr. Lange Clark, Purchaser of the above-referenced PACT Contract, requests relief from the operation of PACT Rule 5.08 which prohibits payment of college invoices received more than one-year from the date of the term for which payment is sought. PACT Rule 10.00 provides that "Any aggrieved Contract Purchaser desiring to petition for relief from the Rules may do so by submitting a written petition to the Board." Mr. Clark has complied with the provisions of Rule 10.00.

### Facts

The Beneficiary, Virginia Clayton Clark, attends the College of Charleston and was eligible to receive PACT benefits for the Fall Semester of 2011. A request for payment of fifteen (15) credit hours for that semester was not received by PACT until August 2013 and, consequently, payment was denied under Rule 5.08. In his petition to waive Rule 5.08, Mr. Clark avers that he made several requests on specific dates within the one-year time frame to the College of Charleston for them to invoice PACT and that he was told that invoices would be sent to PACT. The College of Charleston, through correspondence from its Treasurer David G. Katz, does not dispute Mr. Clark's averments but claims that the College "has no information" to that effect. Further, Mr. Katz requests that PACT waive the application of Rule 5.08 to this payment.

The College has applied for and received PACT payments on behalf of the Beneficiary for tuition and fees before and after the 2011 Fall Semester.

### **Discussion**

In addition to Rule 5.08, Rule 5.03 (Payment of Benefits—Alabama Independent/Private, and Out-of-State or Foreign Eligible Educational Institution) is pertinent. That Rule requires that the Purchaser or Beneficiary inform the out-of-state institution that PACT contract benefits are available and provide information to PACT on the institution the Beneficiary will be attending. Based upon the information available, the College of Charleston was on notice that the Beneficiary was entitled to PACT benefits for the 2011 Fall Semester and semesters before and after that semester. PACT has made previous and subsequent payments to the College for this Beneficiary and, in those instances, has received timely and proper documentation from the College.

Nothing in the record disputes Mr. Clark's averments that he contacted the College's financial aid office on several occasions in an effort to prompt the College to invoice PACT for the 2011 Fall Semester within the time required by Rule 5.08.

Section 10.09 of the MasterPACT contract signed by Mr. Clark also provides that portions of PACT Rules, Regulations and Procedures may be waived to prevent hardship to the Purchaser or the Beneficiary.

At its May 22, 2013 meeting, the PACT Board of Directors voted to pay invoices received after that date at the rate agreed upon in the Settlement Agreement.

### **Recommendation**

After considering the facts presented by Mr. Clark and the College of Charleston, pertinent PACT records and documentation, and discussions with staff, it is recommended that Rule 5.08 be waived and that the College of Charleston be paid, on behalf of the Beneficiary Virginia C. Clark, the post-settlement amount calculated on the credit hours certified by the College for the Fall Semester of 2011.

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April 10, 2014

Mr. Chad Wright, College Savings Director  
Alabama Prepaid Affordable Tuition Plan  
100 North Union Street, Suit 660  
Montgomery, Alabama 36104

By electronic delivery: chad.wright@treasury.alabama.gov

Re: Plan of Virginia Clayton Clark, account no.: [REDACTED] 6536.

Dear Mr. Wright:

Further to our conversations, I write to appeal the denial of payment due under the above referenced plan for an invoice from the College of Charleston for fifteen semester hours in the fall of 2011. I understand the invoice for the fall of 2011 was due by December 2012 and am informed the invoice was not received by the PACT office until August 5, 2013, some seven months late.

I also understand the payment was denied under PACT Rule 5.08 adopted May 22, 2013. Rule 5.08 states, in part "The Purchaser is responsible for instructing the Eligible Educational Institution to invoice PACT on behalf the Beneficiary. PAC will not pay previous invoices submitted for payment more than a year from the date of the term when the benefits were received."

I respectfully request payment be made for two reasons. First, I complied with Rule 5.08. Specifically, in anticipation of the PACT payment and other outstanding loan requests I entered into an installment payment plan with the College of Charleston on August 15, 2011. The plan required four payments of \$3,068.67. One of the purposes of entering into the plan was to allow payment of the PACT Plan which, by policy since payment was based upon the semester hours taken, would not issue until after the "drop/add" period. From August 15 through August 22, 2011 I had several conversation with the College of Charleston's Financial Aid department. On September 12, 2011 I called the Bursar's Office and inquired about payment of my daughter's PACT Plan and asked if there was anything I needed to do. I was told there was nothing else I needed to do and that they were "Billing next week for PACT." I followed up on September 20, 2011 and were told they were "Working on those this week." I again asked and was again told there was nothing I needed to do. Obviously, the College of Charleston failed to timely submit

Mr. Chad Wright, College Savings Director

April 10, 2014

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the invoice; however, it is indisputable that I complied with the requirement I "... instruct[] the Eligible Educational Institution to invoice PACT on behalf the Beneficiary."

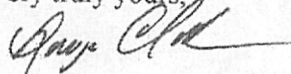
Secondly, the Rule upon which you rely was not promulgated until May 22, 2013. While I am informed the Rule 5.08 existed in some prior version of the Rules, it is not a part of my contract. To the contrary, our contract states that "Contract benefits may be uses for up to ten (10) years after the Projected College Entrance Date of the Qualified Beneficiary . . ." Any subsequently promulgated rule could not supplant the plain language of our contract.

Finally, I wish to point out that the PACT program is, and has been for years, holding my family's money in trust. I am confident you are aware that "A trustee shall administer the trust solely in the interest of the beneficiaries." Section 19-3B-802(a), *Code of Alabama*. A forfeiture of my families money to the PACT program is voidable under section 19-3B-802(b), *Code of Alabama*. We simply wish our money be properly used as it was intended.

If you have any questions or comments, please don't hesitate to contact me. I look forward to the amiable conclusion of this matter.

Thanking you in advance, I am,

Very truly yours,



Lange Clark